D.B.Central Excise Appeal No. 22/2006)
(UOI Vs. M/s Avon Udhyog Jodhpur and Anr.)

24.7.2006

HON'BLE MR RAJESH BALIA, J.
HON'BLE MR.GOPAL KRISHAN VYAS, J.

Mr. Vineet Kumar Mathur, for the appellant/s

Heard learned counsel for the appellant. The appellant desires to raise following question as a substantial question of law arising for consideration in this appeal:-

(i)-Whether the learned Tribunal is right in law in setting aside the demand of duty and penalties imposed in the case where the assessee contravened the provisions stipulated vide Notification No.34/2001-CE dated 28th June, 2001 in availing special compounded levy scheme ?

The facts of this case as have been found by the Tribunal are that assessee is a manufacturer of Steel Rods. He was working on one cold rolling machine and in the month of February, 2002, they purchased a second hand machine. When the revenue officers have visited the premises of the assessee on 12.7.2002, they found that both the machines were working. The panchnama took place on 12.7.2002 and the person who was present at the site informed that the second hand machine machine was repaired and production on trial basis was started on 9.7.2002. It is also pertinent to note here that the assessee has claimed permission to avail the provision of special procedure for payment of Duty in respect of the steel rods processed

on the cold rolling machine w.e.f. 1.8.2002 in respect of machines installed by him in July, 2002. That permission was granted by the Commissioner, Central Excise under the Rules in respect of installation of new machine. Considering these two aspects of the matter, the Tribunal has found that the second hand cold rolling machine, purchased by the assessee could not have started regular production prior to 1.7.2002 and the appellant has already paid tax in ordinary manner upto July, 2002. From August, 2002, he has been permitted to avail special procedure for payment of duty instead of normal mode otherwise provided under the Rules. Therefore, the demand after taking into consideration second machine's production prior to 1st July, 2002 is not sustainable and consequently, the Demand raised by the Assistant Collector and confirmed by the Commissioner, Central Excise were set-aside.

We are of the opinion that the aforesaid facts disclose that the findings reached by the Tribunal are finding of fact and do not give rise to question of law.

Accordingly, the appeal fails and is hereby dismissed.

(GOPAL KRISHAN VYAS)J. (RAJESH BALIA),J.

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